

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Raul Varela,

Petitioner,

v.

Charles L. Ryan, *et al.*,

Respondents.

No. CV-15-01971-PHX-JJT

ORDER

At issue are the Petition for Writ of Habeas Corpus filed by Raul Varela on October 1, 2015 (Doc. 1), to which Charles Ryan and the Atty. Gen. of the state of Arizona filed a Response (Doc. 13); and the Report and Recommendation (“R&R”) prepared in this matter by United States Magistrate Judge James F. Metcalf (Doc. 21), which recommends that this Court deny the Petition.

The time for any party to file objections to the R&R ran as of November 29, 2016. No party filed any objections, either as of that date or at any time thereafter. Such failure to file objections to the R&R is considered a waiver of a party’s right to *de novo* consideration of the issues. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*). It also constitutes a waiver of a party’s right to appellate review of the findings of fact in an order or judgment entered pursuant to the R&R. *See Robbins v. Carey*, 481 F.3d 1143, 1146-47 (9th Cir. 2007). Nonetheless, this Court has undertaken *de novo* review of the issues presented in the Petition and associated briefing. Upon that review, the Court concludes that Magistrate Judge Metcalf’s recommendations are

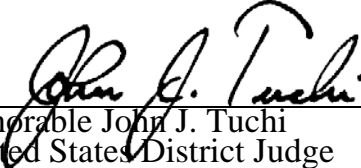
1 wholly sound. The Court adopts in whole Judge Metcalf's R&R and the underlying
2 reasoning. The Court expressly finds sufficient evidence was presented to the jury at trial
3 in the underlying matter from which that jury could rationally conclude that all elements
4 of Count 3 of the charges against Petitioner were met. And in any event, the conclusion
5 of the Arizona Court of Appeals to that effect was not unreasonable. For all of those
6 reasons, the Court will deny the Petition.

7 IT IS ORDERED adopting the R&R (Doc. 21) in whole.

8 IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus
9 (Doc. 1).

10 IT IS FURTHER ORDERED denying a Certificate of Appealability upon the
11 Court's conclusion that jurists of reason would not find its assessment of the
12 constitutional claims to be debatable or wrong.

13 Dated this 13th day of February, 2017.

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15 
16 Honorable John J. Tuchi
17 United States District Judge
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